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Great-West Life and Annuity Ins. Co.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNIVERSITY OF UTAH, UNIVERSITY
HEALTHCARE,) MOTION TO DISMISS CROSS-CLAIM OF
Plaintiff,) CABINETEC, INC. OR ALTERNATIVELY
v.) FOR SUMMARY JUDGMENT BY
CABINETEC, INC., a Nevada Corporation,) GREAT-WEST LIFE AND ANNUITY
CABINETEC HEALTH AND DENTAL) INSURANCE COMPANY
PLAN, an ERISA governed health plan, and) Civil No. 2:09-cv-37
GREAT-WEST LIFE AND ANNUITY) Judge: Clark Waddoups
INSURANCE COMPANY, a Colorado)
corporation)
Defendants.)
GREAT-WEST LIFE AND ANNUITY)
INSURANCE COMPANY, a Colorado)
corporation,)
Cross-Complainant and Third Party)
Plaintiff,)
v.)
CABINETEC, INC., a Nevada Corporation,)

and CABINETEC HEALTH AND)
DENTAL PLAN, an ERISA governed)
health plan,)
)
Cross-Complaint Defendants,)
)
and)
)
UNITED RESOURCE NETWORKS, a)
Delaware corporation, and)
OPTUMHEALTH, INC., a Delaware)
corporation,)
)
Third-Party Defendants.)
)
)

Defendant, Cross-Complainant and Third-Party Plaintiff Great-West Life and Annuity Insurance Company (“Great-West”), through its counsel of record, Holland & Hart LLP, and pursuant to Rule 12(b)(6) or alternatively, Rule 56, of the Federal Rules of Civil Procedure, hereby respectfully moves the Court to dismiss the Cross Claim Against Great-West, filed August 11, 2009, by Defendants, Cross-Complaint Defendants, and Cross-Claimants CabineTec, Inc. and CabineTec Health and Dental Plan (collectively “CabineTec”), or alternatively, to grant summary judgment in favor of Great-West and against CabineTec.

The Motion is made on the grounds that CabineTec has failed to state a claim for which relief can be granted as against Great-West or alternatively, that as a matter of law CabineTec cannot establish the required elements of its claims against Great-West. Specifically, CabineTec’s claims are preempted by the Employee Retirement Income Security Act (“ERISA”). In addition, the doctrine of res judicata bars all three claims due to Great-West’s prior Nevada action against CabineTec. That dispute involved the same parties, the present

claims asserted by CabineTec were compulsory counterclaims and could have been raised in the Nevada action, and CabineTec confessed judgment and admitted its failure to pay premiums as alleged in the Nevada claim by Great-West. Finally, the motion is proper because the actual contractual provisions between the parties demonstrate that each of CabineTec's claims fail as a matter of law, for the simple reason that the allegations of wrongdoing by CabineTec are fatally undermined by the terms of the parties agreement. Consequently, for these reasons, the Court should dismiss CabineTec's Cross-Claim with prejudice, or alternatively, grant summary judgment to Great-West on each claim.

The motion is supported by the accompanying memorandum in support hereof, the pleadings and exhibits on file in this action, the Affidavit of Dianna L. Sweet, the documents and exhibits before the Court, and on such other evidence as may be submitted to the Court.

Dated: September 11, 2009

HOLLAND & HART LLP

/S/ Bryan K. Benard

Bryan K. Benard
Attorneys for Defendant, Cross-Complainant and
Third-Party Plaintiff Great-West Life and
Annuity Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on 9/11/2009, I electronically filed the foregoing with the Clerk of Court using CM/ECF system which will send notification of such filing to the following e-mail addresses:

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